

# FEDERAL COURT OF AUSTRALIA

## WZAQX v Minister for Immigration and Citizenship [2013] FCA 90

|                                        |                                                                                         |
|----------------------------------------|-----------------------------------------------------------------------------------------|
| Citation:                              | WZAQX v Minister for Immigration and Citizenship<br>[2013] FCA 90                       |
| Appeal from:                           | WZAQX v Minister for Immigration & Anor<br>[2012] FMCA 1058                             |
| Parties:                               | <b>WZAQX v MINISTER FOR IMMIGRATION AND<br/>CITIZENSHIP and REFUGEE REVIEW TRIBUNAL</b> |
| File number:                           | WAD 328 of 2012                                                                         |
| Judge:                                 | <b>SIOPIS J</b>                                                                         |
| Date of judgment:                      | 15 February 2013                                                                        |
| Corrigendum:                           | 1 March 2013                                                                            |
| Date of hearing:                       | 12 February 2013                                                                        |
| Place:                                 | Perth                                                                                   |
| Division:                              | GENERAL DIVISION                                                                        |
| Category:                              | No Catchwords                                                                           |
| Number of paragraphs:                  | 27                                                                                      |
| Counsel for the Appellant:             | The appellant appeared by telephone link with the<br>assistance of an interpreter.      |
| Counsel for the<br>First Respondent:   | Ms B Rayment                                                                            |
| Solicitor for the<br>First Respondent: | Sparke Helmore                                                                          |

# **FEDERAL COURT OF AUSTRALIA**

## **WZAQX v Minister for Immigration and Citizenship [2013] FCA 90**

### **CORRIGENDUM**

1. On the cover sheet of the Reasons for Judgment, the “Date of judgment” should read “15 February 2013”, instead of “15 February 2012”.
2. On the cover sheet of the Reasons for Judgment, the “Date of hearing” should read “12 February 2013”, instead of “12 February 2012”.
3. On the Orders page of the Reasons for Judgment, the “Date of order” should read “15 February 2013”, instead of “15 February 2012”.
4. On the first page of the Reasons for Judgment, the “Date” of the Reasons for Judgment should read “15 February 2013”, instead of “15 February 2012”.
5. On the last page (page 6) of the Reasons for Judgment, the date of the certification clause should read “15 February 2013”, instead of “15 February 2012”.

I certify that the preceding five (5) numbered paragraphs are a true copy of the Corrigendum to the Reasons for Judgment herein of the Honourable Justice Siopis.

Associate:

Dated: 1 March 2013

**IN THE FEDERAL COURT OF AUSTRALIA  
WESTERN AUSTRALIA DISTRICT REGISTRY  
GENERAL DIVISION**

**WAD 328 of 2012**

**ON APPEAL FROM THE FEDERAL MAGISTRATES COURT OF AUSTRALIA**

**BETWEEN:**                **WZAQX**  
                                 **Appellant**

**AND:**                     **MINISTER FOR IMMIGRATION AND CITIZENSHIP**  
                                 **First Respondent**

**REFUGEE REVIEW TRIBUNAL**  
**Second Respondent**

**JUDGE:**                 **SIOPIS J**

**DATE OF ORDER:**    **15 FEBRUARY 2012**

**WHERE MADE:**        **PERTH**

**THE COURT ORDERS THAT:**

1.        The appeal is dismissed.
2.        The appellant is to pay the first respondent's costs.

Note: Entry of orders is dealt with in Rule 39.32 of the Federal Court Rules 2011.

**IN THE FEDERAL COURT OF AUSTRALIA  
WESTERN AUSTRALIA DISTRICT REGISTRY  
GENERAL DIVISION**

**WAD 328 of 2012**

**ON APPEAL FROM THE FEDERAL MAGISTRATES COURT OF AUSTRALIA**

**BETWEEN:**                **WZAQX**  
                                 **Appellant**

**AND:**                     **MINISTER FOR IMMIGRATION AND CITIZENSHIP**  
                                 **First Respondent**

**REFUGEE REVIEW TRIBUNAL**  
**Second Respondent**

**JUDGE:**                 **SIOPIS J**

**DATE:**                 **15 FEBRUARY 2012**

**PLACE:**                **PERTH**

**REASONS FOR JUDGMENT**

1            1            The appellant is an Indian citizen. He arrived in Australia on 12 December 2008 on a temporary higher education visa as the dependant spouse of the primary temporary higher education visa holder. Shortly before his arrival in Australia, the appellant had married Ms Parveen Kumari, the primary visa holder, in an arranged marriage in India.

2            2            On 27 December 2008, the appellant separated from his wife. The appellant and his wife were divorced on 24 April 2011.

3            3            On 12 October 2010, the appellant's visa was cancelled after the Department of Immigration and Citizenship (the Department) found that he was no longer in a genuine and continuing relationship with the primary visa holder. Ms Kumari, with the encouragement of her brother and father, made unsuccessful representations to the Department in support of the appellant's submission to the Department to overturn his visa cancellation.

4            4            The appellant then applied to the Migration Review Tribunal to review the Department's cancellation decision. That application was unsuccessful. On 22 February

2011, the appellant applied to the Minister to intervene to revoke the cancellation of his visa. The Minister declined to intervene. The appellant had been granted a bridging visa in association with his application for ministerial intervention. On 9 June 2011, four days before his bridging visa was due to expire, the appellant applied for a protection visa.

5            In his initial protection visa application, the appellant claimed that he feared returning to India because he feared that his ex-wife's family would commit an "honour killing" in retribution for the dissolution of his marriage. He later also claimed that an unnamed uncle of his ex-wife's family had political connections which would be used to commit and cover up violence towards the appellant and his family.

6            A delegate of the Minister refused the appellant's protection visa application on credibility grounds. The delegate also found that even if the appellant's claims were accepted, the claims disclosed a family dispute, in respect of which State protection was available. For that reason, the delegate found that there was no Convention nexus in respect of fears of harm claimed by the appellant.

#### **THE REFUGEE REVIEW TRIBUNAL**

7            The appellant then applied to the Refugee Review Tribunal (the Tribunal) for a review of the delegate's decision. He gave evidence at the hearing and also called a witness to give evidence at the hearing. The Tribunal was not satisfied that:

[the appellant] or any member of his family had been threatened or harmed in any way by any member of his former wife's family, or by anyone acting on their behalf, or that he faces a real chance of serious harm in India.

8            The Tribunal based this finding on an adverse view that it took of the appellant's credibility. The Tribunal described the appellant's claims and evidence as "irretrievably inconsistent, self-contradictory, opportunistic and irretrievably implausible". In addition, the Tribunal found that the appellant's witness lacked credibility and gave his evidence no weight. The Tribunal described the appellant's actions as a "calculated effort to remain in Australia".

9            The Tribunal went on to find that even if the appellant's claims were to be given credence, his asserted fear lacked the requisite nexus to the Convention to support an

application for a protection visa. The Tribunal found that on his version of events, the harm alleged by the appellant arose out of a family dispute over a failed marriage and the appellant's failure to fulfil his promise to his ex-wife's family to pay for expenses whilst they were living in Australia. The Tribunal also found that if the appellant was subjected to harassment or threats by his ex-wife's family, he would be able to seek effective protection from the Indian authorities. The Tribunal also went on to find that in the unlikely event that official protection in his area was not available, in view of his age, education and background, he would easily be able to relocate to another place in India to guarantee his safety.

## THE FEDERAL MAGISTRATES COURT

10                    10                    The appellant applied to the Federal Magistrates Court for judicial review of the Tribunal's decision. The grounds of review relied upon were the following:

### Ground 1

The Tribunal stated "*The Tribunal is not satisfied...threats...were made for any Convention reason.*": (RRT-p7 at [39]). The Tribunal denied applicant procedural fairness thereby committing jurisdictional error.

### Particulars

The Tribunal failed to provide the applicant procedural fairness by putting this determinative issue (Convention nexus of the claims) or an important consideration to the Applicant at the hearing or in any other time.

### Ground 2

The Tribunal committed jurisdictional error when it stated that the applicant were able to internally relocate to India (RRT Decision, p7 at [41]). The Tribunal erred in failing to take into account all the factors affecting the Applicants (or failing to take into account a relevant consideration) and whether the Applicants could relocate in practical sense which has formed overall assessment of whether there was a real chance of harm.

### Particulars

The Applicants had provided information that the wife's family's roles, the Tribunal failed to consider whether the applicant's wife's family would have access to information regarding the applicant and thereby be threat to the applicant. The Tribunal has failed to take all considerations in to account when it considered relocation or in practical sense.

(Original emphasis.)

11        11                The Federal Magistrate rejected the appellant's application for judicial review.

## **THE APPEAL**

12        12                The appellant has appealed to this Court. The grounds of appeal, in effect, repeat the grounds of review before the Federal Magistrate.

### **Ground 1**

13        13                This ground of appeal complains about the Tribunal's finding which was premised upon the Tribunal's alternative assumption that the appellant had been subjected to threats from his ex-wife's family. In fact, the reason why the Tribunal dismissed the appellant's application for review, was that, the Tribunal found, based upon emphatic credibility findings adverse to the appellant, that no such threats had been made. This ground of appeal attacks only the alternative finding made by the Tribunal, and, accordingly, this ground of appeal is futile.

14        14                In respect of the appellant's application to the Tribunal, s 422B of the *Migration Act 1958* (Cth), provides that the appellant's rights to procedural fairness were exhaustively prescribed by Div 4, ss 422B-429A of the *Migration Act*. Section 424AA states that the Tribunal may give the visa applicant clear particulars of any information which forms "the reason, or a part of the reason, for affirming the decision". In this case, the reason for the decision was that, on credibility grounds, the Tribunal did not accept the appellant's claim that he had been subjected to threats of harm from his ex-wife's family. It is apparent from the Tribunal's decision record that, even though it was not necessary for the Tribunal to do so, the Tribunal told the appellant at the outset of the hearing that his credibility was in issue. The Tribunal also referred the appellant to other matters that were of concern to it, expressly pursuant to s 424AA of the *Migration Act*. (See [26] and [27] of the Tribunal's decision.)

15        15                In my view, the Tribunal complied with its statutory obligations in respect of procedural fairness.

16        16                Nevertheless, in relation to the alternative finding made by the Tribunal, the Federal Magistrate found that the appellant was not, in any event, denied procedural fairness. This was because the appellant was aware that the question of whether his fear of harm was

for a Convention reason was an issue before the Tribunal. The Federal Magistrate also referred to extracts of the delegate's decision record, which showed that the delegate had raised these matters with the appellant.

17        17                The Tribunal also gave the appellant an opportunity to deal with the question of why he would not be able to rely upon the Indian authorities to protect him from any threats made by his ex-wife's family. His response was to say that the Indian police were corrupt and under the influence of politicians. This was rejected by the Tribunal based on country information.

18        18                In my view, even if the appellant was entitled to procedural fairness in relation to this alternative finding, the appellant would have known from the delegate's hearing and decision that the question of whether the harm he feared had a Convention nexus, and whether State protection was available, were issues in the review before the Tribunal. The appellant had an opportunity to deal with those issues before the Tribunal. In my view, the Federal Magistrate did not err in determining that the appellant was not denied procedural fairness.

19        19                This ground of appeal is dismissed.

## **Ground 2**

20        20                By this ground of appeal, the appellant complained that in assessing the prospect of relocating in India, the Tribunal failed to take into account the fact that the appellant's ex-wife's family would be able to obtain information which would lead to him being found and harmed wherever he went in India.

21        21                The same considerations, as set out in [13], apply to this ground of appeal.

22        22                However, in any event, this ground of appeal should be rejected. The Tribunal's decision record shows that the appellant, when asked about the prospect of relocation, told the Tribunal that "they'll find me and kill me".

23        23                It is apparent that the Tribunal placed no weight on that assertion, going on to say: "He offered no explanation nor elaboration, and the Tribunal let the matter rest". In my



view, it was open to the Tribunal to place no weight on the appellant's assertion for the reasons the Tribunal gave. In my view, therefore, the Federal Magistrate did not err in rejecting this ground of review.

24      24              This ground of appeal is dismissed.

**The name of the witness**

25      25              The appellant also mentioned during his oral submissions that the Tribunal had incorrectly recorded the name of his witness. This complaint was dealt with by the Federal Magistrate. His Honour found that no jurisdictional error was disclosed because there was only one witness and, therefore, no confusion could have arisen as to the evidence provided by the witness to whom the Tribunal referred.

26      26              In my view, the Federal Magistrate did not err in reaching that conclusion.

27      27              Accordingly, the appeal is dismissed with costs.

I certify that the preceding  
twenty-seven (27) numbered  
paragraphs are a true copy of the  
Reasons for Judgment herein of the  
Honourable Justice Siopis.

Associate:

Dated:      15 February 2012